

DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2007-28043]

Hours of Service (HOS) of Drivers; Granting of Exemption; American Pyrotechnics Association (APA)

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition; granting of application for exemption.

SUMMARY: FMCSA announces its decision to grant the application for exemption from the American Pyrotechnics Association (APA) on behalf of 9 member motor carriers seeking relief from FMCSA's hours-of-service (HOS) regulation that prohibits driving of commercial motor vehicles (CMV) after the 14th hour after the driver comes on duty [49 CFR 395.3(a)(2)].

DATES: This exemption is effective during the periods of June 28, 2011, through July 8, 2011, and June 28, 2012, through July 8, 2012, inclusive.

FOR FURTHER INFORMATION CONTACT: Ms. Christine Hydock, FMCSA Driver and Carrier Operations Division, Office of Bus and Truck Standards and Operations, Telephone: 202-366-4325. E-mail: MCPSD@dot.gov.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31315 and 31136(e), FMCSA may grant an exemption from the HOS requirements in 49 CFR 395.3(a)(2) for up to two years if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption" (49 U.S.C. 31315(b)(1)).

The initial APA application for waiver or exemption relief from the 14-hour rule was submitted in 2004; a copy of the application is in the docket. That application fully describes the nature of the pyrotechnic operations of the CMV drivers employed by APA-member motor carriers during a typical Independence Day period. The CMV drivers are trained pyrotechnicians and hold commercial driver's licenses with hazardous materials endorsements. They transport fireworks and related equipment by CMV on a very demanding schedule, often to remote locations. After they arrive, the APA drivers are responsible for set-up and staging of the fireworks shows.

Previously, the Agency had granted a waiver to APA for a similar exemption for the 2004 Independence Day period, and two-year exemptions for the 2005-2006 and 2007-2008 periods. In 2009, FMCSA granted the same limited exemption to 14 new APA-member motor carriers (74 FR 29266, June 19, 2009) and renewed 61 exemptions of APA-member motor carriers (74 FR 29264, June 19, 2009) for their CMV transportation of fireworks for Independence Day displays in 2009 and 2010.

APA is currently seeking relief for 9 APA-member companies from FMCSA's HOS regulation for the 2011 and 2012 Independence Day periods. A list of the 9 APA-member companies being exempted from 49 CFR 395.3(a)(2) is included as an Appendix to this notice.

The HOS rules prohibit a property-carrying CMV driver from driving after the 14th hour after coming on duty following 10 consecutive hours off duty (49 CFR 395.3(a)(2)). During the periods June 28 - July 8, 2011, and June 28 - July 8, 2012, inclusive, the companies named in the Appendix, and CMV drivers employed by them,

will be exempt from section 395.3(a)(2) if they are operating in conjunction with the staging of fireworks shows celebrating Independence Day.

The exemption permits CMV drivers engaged in these operations to exclude off-duty and sleeper-berth time of any length from the calculation of the 14-hour on-duty period. These drivers must continue to obtain 10 consecutive hours off duty prior to the 14-hour period, and observe the 11-hour driving time limit, as well as the 60- and 70-hour on-duty limits.

APA sought this exemption because compliance with the current 14-hour rule by its members during these two 11-day periods would impose a substantial economic hardship on numerous cities, towns and municipalities, as well as the APA companies. To meet the demand for fireworks under the current HOS rules, APA asserts that its member companies would be required to hire a second driver for most trips. The result would be a substantial increase in the cost of the fireworks shows – beyond the means of many of its members' customers – and would deny many Americans this important component of their Independence Day celebration.

APA maintains that the operational demands of this unique industry minimize the risk of CMV crashes. It also maintains that renewal of the exemption will not adversely affect the safety of the fireworks transportation provided by these motor carriers, and will actually improve safety in the storage of hazardous materials.

Public Comment

On May 24, 2011, FMCSA published a notice in the **Federal Register** (76 FR 30232) announcing APA's application for exemption for these 9 member motor carriers,

and requesting public comment. The comment period closed on June 14, 2011. As of June 20, no comments were filed in response to the May 24 notice.

FMCSA Decision

In considering this application for exemption, the Agency reviewed its records for any unfavorable safety information regarding the applicants' motor carrier operations. The Agency also reviewed records of the Pipeline and Hazardous Materials Safety Administration (PHMSA), which has jurisdiction over certain aspects of the transportation of hazardous materials, as specified in the Hazardous Materials Regulations (HMR)(49 CFR parts 105-185). FMCSA and PHMSA records contained no significant unfavorable safety information regarding these 9 motor carriers.

The FMCSA decision to grant the request for exemption from 49 CFR 395.3(a)(2) is based on the merits of the application. The Agency believes that these APA operations, conducted under the terms and conditions of this limited exemption, will achieve a level of safety that, at a minimum, is equivalent to the level that would be achieved absent the exemption. The identical limited exemption has been in effect during Independence Day periods since 2005 for designated APA-member motor carriers conducting these operations. There have been no reported accidents or incidents involving these carriers while operating under the exemption. The drivers employed by the companies, firms, and entities listed in the appendix to this notice are granted relief from the requirements of 49 CFR 395.3(a)(2) under the following terms and conditions:

Terms of the Exemption

Period of the Exemption

The exemption from the requirements of 49 CFR 395.3(a)(2) [the “14-hour rule”] is effective from June 28 (12:01 a.m.) through July 8, 2011 (11:59 p.m.) and from June 28 (12:01 a.m.) through July 8, 2012(11:59 p.m.).

Extent of the Exemption

This exemption is restricted to drivers employed by the companies, firms and entities listed in the Appendix to this notice. The drivers are provided a limited exemption from the requirements of 49 CFR 395.3(a)(2). This regulation prohibits a driver from driving after the 14th hour of coming on duty and does not permit off-duty periods to extend the 14-hour limit. Drivers covered by this exemption may exclude off-duty and sleeper-berth time of any length from the calculation of the 14-hour limit. These drivers must continue to obtain 10 consecutive hours off duty prior to the 14-hour period, and remain subject to the 11-hour driving time limit, the 60- and 70-hour on-duty limits, and all other requirements of 49 CFR part 395.

Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with or is inconsistent with this exemption with respect to a person operating under the exemption (49 U.S.C. 31315(d)).

Notification to FMCSA

Under the exemption, each APA motor carrier, firm and entity listed in the appendix to this notice must notify FMCSA within 5 business days of any accident (as defined in 49 CFR 390.5), involving any of the motor carrier’s CMVs, operating under the terms of this exemption. The notification must include the following information:

- a. Date of the accident,

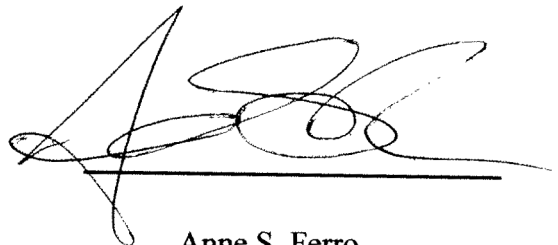
- b. City or town, and State, in which the accident occurred, or closest to the accident scene,
- c. Driver's name and license number,
- d. Vehicle number and State license number,
- e. Number of individuals suffering physical injury,
- f. Number of fatalities,
- g. The police-reported cause of the accident,
- h. Whether the driver was cited for violation of any traffic laws, or motor carrier safety regulations, and
- i. The total driving time and total on-duty time period prior to the accident.

Termination

FMCSA does not believe the APA member-motor carriers and drivers covered by this exemption will experience any deterioration of their safety record. However, should this occur, FMCSA will take all steps necessary to protect the public interest, including revocation of the exemption. FMCSA will immediately revoke the exemption for failure to comply with its terms and conditions. Each motor carrier and each driver may be subject to periodic monitoring by FMCSA during the period of the exemption.

Issued on:

JUN 9 2 2011

A handwritten signature in black ink, consisting of a large, stylized 'A' followed by several loops and a horizontal line at the bottom.

Anne S. Ferro
Administrator

Appendix to the Notice of Application of American Pyrotechnics Association (APA)
For a Limited HOS Exemption for 9 Motor Carriers during the 2011 and 2012
Independence Day Celebrations

	Motor Carrier	Address		DOT #
1	AM Pyrotechnics, LLC	2429 East 535th Rd.	Buffalo, MO 65622	1034961
2	Arthur Rozzi Pyrotechnics	6607 Red Hawk Ct.	Maineville, OH 45039	2008107
3	East Coast Pyrotechnics, Inc.	4652 Catawba River Rd.	Catawba, SC 29704	545033
4	Fireworks Extravaganza	58 Maple Lane	Otisville, NY 10963	2064141
5	Hi-Tech FX, LLC	1135 Ave. I	Fort Madison, IA 52627	1549055
6	North Central Industries, Inc.	1500 E. Washington	Muncie, IN 47305	00165755
7	Pyro Spectaculars North, Inc.	5301 Lang Avenue	McClellan, CA 95652	1671438
8	Pyrotechnic Display, Inc.	8450 W. St. Francis Rd.	Frankfort, IL 60423	1929883
9	Western Display Fireworks, Ltd.	10946 S. New Era Rd.	Canby, OR 97013	498941